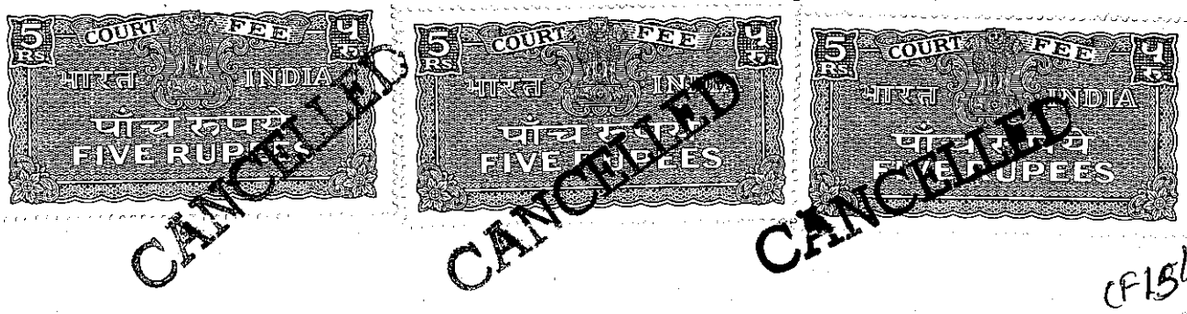

(3)

CF 15

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

Single Bench

Misc. Appeal . NO. 69 OF 2004 Division Bench

APPELLANT NON-APPLICANT	1.	The Oriental Insurance Company Ltd .Medical College Road , Kachheri Chowk , Raipur . Through the Divisional Manager , Divisional Office , High Court Road, Bilaspur , (Chhattisgarh) .

- Versus -

RESPONDENTS APPLICANT	1.	Rajnarayan Verma , s/o . Rambharosh Verna , Resident of village : Kohla , P/s –Kashdol , Tehsil : Balodabajar , District : Raipur , (Chhattisgarh) .
NON-APPLICANT	2.	Yashwant lal Sahu , S/o. Kartik Ram Sahu , Resident of Village : Munda , P/s : Balodabajar, District : Raipur , (Chhattisgarh) .

P. R. No. 183/04 Samelan Behar
Presented by Shri
dated 15.01.04

MEMO OF APPEAL UNDER SECTION 30 OF WORKMEN'S COMPENSATION ACT , 1923

Appeal valued 2,22,710/-

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मामला क्रमांक M.A.No.68/2004 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

5/10/2006

Shri H.S. Patel, Advocate for the appellant.

Shri Vinod Deshmukh, Adv. for the respondent No. 1.

Shri Vivek Rathore, Adv. for the respondent No. 2.

Heard learned counsel for the parties.

2. The appellant has preferred this appeal under Section 30 of Workman's Compensation Act, 1923 against the award dated 17-11-2003 passed by the Additional Commissioner for Workman's Compensation-cum-Labour Court, Raipur in Case No. 3/W.C.Act/98 (Fatal) whereby allowing the application for compensation of Respondent No. 1 towards the death of his son namely Hemshankar Verma, a sum of Rs. 2,22,710=00 has been awarded and a penalty of Rs. 20,000=00 has been imposed. This appeal has been preferred by the appellant-Insurance Company on the following substantial question of law:-

"Whether the learned Tribunal was justified in rejecting the application under Order 6 Rule 17 read with Section

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

151 of C.P.C. and the application under Order 13 Rule 2 and Order 8 Rule 1 of C.P.C. which were filed by the appellant to amend his reply to the petition to incorporate the pleading that on subsequent verification, the licence produced by the driver of the vehicle in question was found to be fake and the report of the Investigator undertaking verification was not permitted to be filed ?

3. Learned counsel for the appellant submits that in the instant case, the claimant is the father of the deceased workman Hemshankar, who admittedly died on 10-7-1997 in the course of his employment while driving the tractor involved in the accident resulting in his death. The claimant filed the above application on 8-1-1998 with the averment that monthly income of the deceased Hemshankar Verma was Rs. 2,000/- and he was aged 23 years on the date of the accident. Notice regarding his death was given to the non-applicant No. 1- i.e.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

owner of the Tractor through his Advocate however he did not reply to the notice and in the aforesaid circumstances, the application for compensation was filed.

4. In reply, the non-applicant No. 1 denied the averments of the claim petition and submitted that the necessary parties i.e. wife of the deceased and his son have not been arrayed as parties in the present petition by the claimant and the deceased was not in regular employment and he was paid Rs. 50/- per day while he was engaged in duty. It was further submitted that the vehicle involved in the accident was insured with the non-applicant No. 2 and therefore, the non-applicant No. 1 was not responsible for payment of compensation.

5. The non-applicant No. 2-the appellant herein in their reply to the claim petition have denied the allegations of the claim petition and submitted that the deceased Hemshankar did not hold valid licence and the vehicle in question was being driven

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

by unauthorized person in violation of the conditions of the policy and, therefore, the non-applicant No. 2-appellant was not responsible for payment of any award passed in favour of the claimant. However, the fact that the tractor was insured with the non-applicant No. 2 at the relevant time has been admitted.

6. On 22-8-2003, the non-applicant No. 2 moved an application under Order 13 Rule 2 and Order 8 Rule 1(A)(3) read with Section 151 of C.P.C. and prayed for permission to file report submitted by their Investigator to the effect that the driving licence issued was issued to the deceased Hemshankar Verma 16-7-1997 and another application was preferred by the non-applicant No. 2 for amending the reply in order to incorporate the pleadings based on the report of the Investigator. However, learned Tribunal rejected both the applications vide order dated 15-10-2003 on the ground that the matter was pending since 1998 and the evidence of both the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

parties have been recorded and the matter is posted for final arguments and in the facts and circumstances, the applications deserve to be dismissed.

7. Learned counsel for the appellant submits that the report of the Investigator was filed before the Court immediately after the same was received from the Investigator and the delay occasioned because of the time taken in investigation and because the licence of Hemshankar was produced belatedly and, therefore, the Court below ought to have allowed both the applications preferred by the Insurance Company which go to the root of the matter and to that extent the order dated 15-10-2003 rejecting the above applications and consequently the impugned order are bad in law and, therefore, the substantial question of law as proposed above arises for adjudication of this appeal.

P.T.O.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 6	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	8. On the other hand, learned counsel for the respondent No. 1-claimant, supporting the impugned award submits that there is no dispute that the vehicle involved in the accident was insured with the Insurance Company. It is also not disputed that the vehicle was insured for the purposes of agricultural work, which has been admitted by the witness examined on behalf of the appellant himself. He further submits that the above applications for filing the report of the Investigator and for the purpose of amending the reply, were filed by the appellant after more than 5 years of the accident at the fag end of the proceedings without any valid explanation when the matter was fixed for final arguments and considering these circumstances, the learned Tribunal rejected the applications preferred by the Insurance Company against which the Insurance Company did not prefer any appeal or revision and as such, the same attained finality. He further submits that no substantial	

T.I.O.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 7	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

question arises for adjudication of this appeal as proposed by the appellant and the appeal deserves to be dismissed.

9. I have heard the appeal finally with the consent of the parties.

10. The death of the deceased Hemshankar in the course of his employment with respondent no. 2 is not in dispute. It is also not in dispute that the vehicle was insured with the appellant at the relevant time and as per the conditions of the policy, the risk of the driver of the vehicle was also covered. The Tribunal on the basis of the pleadings of the parties has framed issues and recorded statements of witnesses from both the sides and has passed the award by recording the findings that deceased Hemshankar was tractor driver under the non-applicant and he died on 10-7-1997 as a result of the accident and at that time he was earning Rs. 2,000/- per month and he was aged 21 years and the claimant is the dependant of the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 8	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

deceased workman as per Section 2 of the Act and if necessary parties have not been arrayed, then at the time of disbursing the amount of award, the amount can be disbursed to them and with these findings, a sum of Rs. 2,22,710=00 has been awarded as per Schedule attached with the Workman's Compensation Act and along with this, penalty of Rs. 20,000/- has been imposed and the non-applicant has been directed to deposit the above amount in the Court within a month so that same may be disbursed amongst the dependants of the deceased.

11. So far as the only submission of the counsel for the appellant that the application preferred by the Insurance Company was wrongly rejected and the Court below ought to have allowed the application and afforded the opportunity to the appellant to lead evidence and prove the document being the report of the Investigator and only thereafter, the award ought

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 9	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

to have been passed, is concerned, from a perusal of the record, it is evident that the above application was filed with inordinate delay of 5 years and the only explanation offered by the appellant for late filing of the application is that the report from the Investigator was received belatedly, this Court is of the considered opinion that the explanation offered by the appellant for filing the document belatedly was not sufficient and the Court below rightly rejected the application on the ground of inordinate delay in filing of the same.

12. On the basis of the aforesaid discussion, this Court is of the considered opinion that there is no illegality or infirmity in the impugned award and no substantial question of law as proposed by the appellant arises for adjudication of this appeal. The appeal is devoid of substance and is accordingly dismissed.

Sd/-
Dhirendra Mishra
Judge

P.T.O.